

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

5 United States of America,

6 || Plaintiff,

7 | vs. Criminal Action No.: 3:21-mj-138-2

8 | Diana Toebe,<sup>1</sup>

9 || Defendant.

11 Proceedings had in the Initial Hearing in the  
12 above-styled action on October 12, 2021, before the Honorable  
13 Robert W. Trumble, Magistrate Judge, at Martinsburg,  
14 West Virginia.

## APPEARANCES

16 || On behalf of the United States of America:

24 || The defendant was present in person.

25 Proceedings reported by means of digital recording; transcript produced by computer-aided transcription.

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217 W. King Street, Room 214, Martinsburg, WV 25401  
304-267-5688

1                             (Digitally-recorded proceedings in open court.)

2                             (October 12, 2021, 10:58 A.M.)

3                             - - -

4                             THE COURT: Good morning. Please be seated.

5                             Tara, would you call the case for me, please.

6                             THE CLERK: This is the case of the United States of  
7 America versus Diana Toebbe, Criminal No. 3:21-mj-138,  
8 defendant 2.

9                             The Government is represented by counsel, Jarod Douglas and  
10 Jessica Smolar, Assistant United States Attorneys. The  
11 defendant is present and in person.

12                             Are the parties ready to proceed?

13                             MR. DOUGLAS: The government is ready, Your Honor.

14                             THE COURT: All right. Good morning. We're  
15 scheduled this morning for an initial appearance on a complaint  
16 this morning. And before we get started, I -- we have people  
17 that are participating in this hearing by Zoom conference.  
18 Anybody that's participating, please make sure that your  
19 microphones are muted and your cameras are turned off and  
20 remain so during the course of this hearing.

21                             Ms. Toebbe, do you understand English?

22                             THE DEFENDANT: Yes.

23                             THE COURT: My name is Robert Trumble. I'm the  
24 United States Magistrate Judge. Would you stand and be sworn  
25 by the clerk, please.

1                   (The defendant was sworn in.)

2                   THE DEFENDANT: Yes.

3                   THE COURT: Thank you. Please be seated.

4                   Ms. Toebbe, are you a citizen of the United States?

5                   THE DEFENDANT: Yes.

6                   THE COURT: Would you state your full name for the  
7 record, please.

8                   THE DEFENDANT: Diana Smay Toebbe.

9                   THE COURT: Ms. Toebbe, what is your date of birth?

10                  THE DEFENDANT: 12/23/1975.

11                  THE COURT: And where do you reside? What is your  
12 physical address?

13                  THE DEFENDANT: 125 Boyd Drive, Annapolis, Maryland,  
14 21403.

15                  THE COURT: And do you have a telephone or contact  
16 number where you can be reached?

17                  THE DEFENDANT: I do not have possession of my cell  
18 phone at this time. That's the only phone I have.

19                  THE COURT: If you had a cell phone in your  
20 possession, what would the number be?

21                  THE DEFENDANT: 303-475-6859.

22                  THE COURT: All right. Thank you.

23                  Ms. Toebbe, all persons who are charged with a crime are to  
24 be brought before a judge as soon as possible after their  
25 arrest. This is an initial appearance. It's not a trial.

1 There's no determination of guilt or innocence here today. But  
2 I am here to let you know of the charges that are pending  
3 against you, to let you know you have a right to an attorney,  
4 and determine whether you'll be released pending your trial or  
5 whether we have to set a detention hearing.

6 Now, you are charged in a criminal complaint here in the  
7 Northern District of West Virginia. There are two charges  
8 contained in this complaint. One is conspiracy to communicate  
9 restricted data in violation of Title 42, United States Code,  
10 Section 2274(a), and the second is communication of restricted  
11 data in violation of Title 42, United States Code, Section  
12 2274(a).

13 Ms. Toebbe, the penalties for those, if you're found guilty  
14 of those violations, the penalties for both of those would be  
15 up to life imprisonment, a fine of \$100,000, and five years of  
16 supervised release. And as I indicated that would apply to  
17 both of those charges provided you're found guilty of those  
18 charges.

19 I've provided for you in written form your constitutional  
20 rights, and they should be on the table in front of you. Do  
21 you have them there?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I'm going to read your constitutional  
24 rights to you. I'd like you to follow along with me, please.

25 You have a constitutional right to remain silent. If you

1 give up your right to remain silent, anything you say can and  
2 will be used against you in this or any other court of law.  
3 Even if you may have given a statement to the police or others,  
4 you have a constitutional right to make no further statement to  
5 the authorities. If you start to make a statement, you have a  
6 constitutional right to stop in mid-word or sentence and say no  
7 more. You have a right to counsel to assist you in this  
8 matter. If you cannot afford an attorney, you may qualify to  
9 have an attorney appointed to represent you. And whether  
10 appointed or retained, you have the right to the assistance of  
11 counsel at every stage of the proceedings against you and  
12 during any questioning by the authorities.

13 Do you understand your constitutional rights as I've read  
14 them to you?

15 THE DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: All right. Thank you. You have a right  
17 to retain counsel or ask that counsel be appointed for you if  
18 you do not have the funds to hire an attorney. I have on my  
19 bench a financial affidavit that appears to bear your  
20 signature.

21 So first of all, did you, in fact, complete this financial  
22 affidavit?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And is this your signature on the  
25 financial affidavit?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: Is the information that you provided  
3 concerning your income, assets, obligations, and debts true and  
4 correct to the best of your knowledge, information, and belief?

5                   THE DEFENDANT: To the best of my knowledge which is  
6 very limited.

7                   THE COURT: All right. Are there any errors,  
8 omissions, mistakes, corrections that you need to bring to my  
9 attention at this time?

10                  THE DEFENDANT: Not that I'm able to do.

11                  THE COURT: All right. I find that you qualify for  
12 court-appointed counsel and will so order.

13                  Mr. Douglas, is the government moving to detain Ms. Toebbe  
14 pending her trial?

15                  MR. DOUGLAS: Yes, Your Honor. We filed a motion.

16                  THE COURT: All right. Ms. Toebbe, the government  
17 has filed a motion to detain you pending your trial in this  
18 matter. You're entitled to a detention hearing. We'll conduct  
19 your detention hearing on Friday, October 15, 2021, and we'll  
20 do that at 11:00 A.M. in the morning.

21                  You're also entitled to a preliminary examination hearing  
22 to determine whether there's probable cause that you committed  
23 the offenses to which you are charged. We'll conduct your  
24 preliminary examination hearing on Wednesday, October 20, 2021,  
25 at 1:00 P.M.

1 Now, in the meantime, you will be held in the custody of  
2 the U.S. Marshals Service, but you should have an opportunity  
3 to meet with your court-appointed counsel to discuss not only  
4 the charges that are pending against you but also to prepare  
5 for your detention hearing and preliminary examination.

6 Ms. Toebbe, there's nothing further we can accomplish at an  
7 initial appearance. So with that in mind, you are hereby  
8 remanded to the custody of the U.S. Marshals Service, and we  
9 stand adjourned. Thank you.

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11 || (Hearing concluded at 11:14 A.M.)

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## CERTIFICATE

I, Kate A. Slayden, Registered Professional Reporter  
and Official Court Reporter of the United States District Court  
for the Northern District of West Virginia, do hereby certify  
that the foregoing is a true and correct transcript to the best  
of my ability of the digitally-recorded proceedings had in the  
above-styled action on October 12, 2021, as transcribed by me.

I certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

Given under my hand this 12th day of October, 2021.

/s/Kate A. Slayden

Kate A. Slayden, RPR, CCR  
Official Reporter, United States  
District Court for the Northern  
District of West Virginia